

Workstream:

Agreements Management

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION
TRANSFORMATION MANAGEMENT TEAM

AGREEMENTS OPERATIONS
ASSESSMENT

ANALYSIS & RECOMMENDATION
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ISSUE TO BE REVIEWED (HYPOTHESIS)

The Department enters into approximately 700 agreements each year. Agreements can be with local governments, developers and private businesses, individuals, non-profits, etc. and cover any part or all aspects of transportation improvements. The majority of agreements are prepared and processed by the Agreements group in the Funds Administration Unit - Fiscal Branch. The Enhancement group is also a part of the Funds Administration Group and handles enhancement projects statewide. More divisions/units/branches have now become involved in preparing these agreements (divisions, rail, and bike). Consistency in format, content, timely execution, and the tracking process are very important for all agreements. Depending on whether the Department is owed money or owes the other party money, Accounts Receivable or External Audit staff review/approve/process the invoices under the terms of each agreement. Clearly defined provisions in the agreement are essential to accurate invoicing. Another critical component is project management after execution of the agreements and where that responsibility should reside. There is an immediate need for the department to improve the agreement process, increase efficiency in the areas of agreement preparation, execution, and record retention, provide necessary training and guidance to the various parties, enhance the project monitoring or management function, and, finally, to determine the most appropriate organizational structure and staffing for these responsibilities.

RESEARCH AND FINDINGS

- 1) *Need to identify group and/or units responsible for all types of agreements the department enters into (excluding right of way acquisition and encroachment agreements).*

Currently, there are two functional areas for agreements. One is for the development of the Enhancement Program for the Department. This involves identification of eligible projects and funding, and becomes a part of the TIP. The Enhancement staff prepares agreements and provides project administration and management for each project.

The other area is the Agreements Group. Their responsibilities are to develop project specific agreements for several areas of the department. They also perform a limited amount of review during the project development process, and very limited amount of project management responsibilities.

Every agreement cannot be exactly alike due to different scopes of work, locations, reimbursement terms, funding sources, etc., but the format and a large part of the content of the agreements, such as general statutes, state specifications, and fiscal requirements, do remain largely consistent. Reviews of current agreements show each division has a slightly different format and wording for those agreements they prepare. Some divisions track and process agreements in a timely manner, while others have significant lag time in finalizing agreements. Some divisions have designated staff that track and perform the administrative tasks to get the agreements finalized. Other divisions do not have one particular person for all agreements. This multiple approach creates confusion for contact purposes, accountability, and difficulty in getting the agreements in sync with the project schedule and letting dates.

Often times, agreements are not executed by the other party before the work is initiated and/or completed, which can result in difficulty in getting the other party to sign the agreement. Accounts Receivable or Accounts Payable staff struggle to process invoices in a timely manner if they do not have a clearly worded and fully executed agreement. Departmental funds can be impacted when the department is owed money from the other party, the agreement is not finalized, reimbursement is delayed, and in extreme cases, the other party can refuse to pay if the agreement was never executed.

A clearly identified Unit, using a uniform and consistent format and providing training, guidance and direction as needed, would reduce the differing versions, numerous changes, and delayed execution of the various agreements. Each division should have an employee whose job responsibilities include management of the agreements at the division level.

Training needs to be provided to both internal and external users on the agreements process, both in the negotiations and development of the terms of the agreement, but also in the follow through after the agreement is fully executed and each party is expected to perform their respective tasks on time and correctly. A workbook or manual of the policies, procedures, and process for agreements and training should be provided for both external and internal customers. Options include the Construction Manual could be amended to include the necessary information and instructional material and a web-based information and checklist similar to that used by the Enhancement Unit would be beneficial to both external and internal customers and users.

2) *Need to research the use of a web-based application for the development and drafting of agreements.*

In 2005, the Funds Administration Manager and the Agreements Unit staff have met with technical support staff with the Information Technology Branch to explore developing a web-based approach to producing agreements. This initiative was not completed due to IT staff being re-directed to work on a higher priority project. At a recent meeting, IT staff gave a rough estimate of Fall '08 as a best case target date to have this program in place, but was optimistic it could be in place by the end of 2008. This program would be beneficial for making the agreements more uniform, reducing preparation time, and increasing efficiency in the agreement preparation. It is especially critical for tracking and reporting processes.

3) *Need to confirm that agreements are being executed by the appropriate departmental level of management.*

Currently, the State Highway Administrator is responsible for executing the majority of all agreements. For those agreements for improvements outside the Division of Highways such as construction of bikeways or improvements to rail lines and facilities, the Deputy Secretary for that area executes those agreements.

4) *Need to determine adequate level of staffing to perform the administration of the agreement process for the department.*

The Funds Administration Manager directly supervises the agreements and enhancement units. There are four (4) program managers for enhancement projects and three (3) administrative officers in the agreements unit. Both groups are geographically assigned to specific divisions with one enhancement program manager concentrated on historic site projects and regulations. At the division level, it varies between each division which staff person handles agreements and the associated tasks. This results in a very disjointed and confusing situation on knowing who to contact when questions arise on an agreement. As the number and complexity of agreements increase, a review is needed on the necessary staff (both in each division and the central Raleigh office) needed to provide the proper level of service and implement the new processes, including tracking and reporting functions and project management.

5) *Project oversight and compliance by all parties to the terms of the agreement, after execution and funding approval, needs to be improved and a clearly identified responsible departmental unit/branch or position for project management.*

After execution of the Agreement and distribution and notification to all appropriate external and internal parties, the actual oversight and management of the various phases of the project varies widely between the divisions and branches. Responsibility for project management and communication with the other party to the agreement during the various project phases is critical to the success of the project and adherence to all fiscal procedures. FHWA has expressed concerns about project management and monitoring of compliance with the terms of the various agreements that include federal funding. The Department is held accountable by FHWA to ensure compliance with all federal guidelines and policies for federally funding projects and transportation improvements.

RECOMMENDATIONS

- 1) *Need to identify group/unit responsible for all types of agreements the department executes (excluding right of way acquisition and encroachment documents).*

DOT shall:

- Determine if the responsibility of all agreements (regardless of type of work) should be centralized. At a minimum, all departmental agreements need to be reviewed and approved by the Agreements Unit prior to submittal to the other party for execution. The central office staff would verify consistency, accuracy, and compliance prior to execution. This would also allow tracking and reports to include all agreements since the information would be entered into the database at one location.
- Broadly speaking, state funded project agreements could be prepared at the division level with review by the Raleigh Agreements Unit.
- Federally funded project agreements would be prepared by the Raleigh Agreements Unit. The Division Office would provide comments and input during preparation of the agreement prior to the Raleigh Agreements Unit moving forward with execution of the agreement.
- Right of way acquisition documents should remain with the Right of Way Branch; encroachment agreements were not considered the agreement type being studied by this group and are not included or affected by these recommendations.
- Bike and rail agreements could still be prepared by those units with review by the centralized Agreements Unit.
- Municipal agreements now include more specific information on the relocation of municipally owned utilities with an estimated cost to the other party. It is anticipated that a separate Utility Agreement currently prepared now in the latter stages of a project will not be needed. The city/county would be provided an updated estimate and plan sheets in accordance with the terms of the municipal agreement in lieu of preparing and executing a separate utility agreement.
- As part of the work of this group we were to take a look at the current organizational structure and make recommendations for improvements for efficiency effectiveness. Based on that review it appears that the program development responsibilities of the Enhancements Unit would be better handled in Program Development – TIP Unit. The project selection, prioritization, and funding of the enhancement projects mirrors to a large degree the TIP process for all other types of projects and would be handled in the existing yearly TIP update process. The enhancement agreement preparation and project management of enhancement projects would remain with the existing staff and continue as it functions now. The Enhancement Unit would remain with the Agreements Unit to comprise a centrally located Unit to include certain identified project management functions, cross training between the two units, a team approach when working with the respective divisions, and career growth opportunities with the Unit.
- This centralized agreements unit should be placed organizationally in the project delivery part of the organization. Another TMT workstream is looking at possible creation of a project delivery group whose emphasis is on work groups that interact and coordinate with multiple areas of the organization in the delivery of projects. If that group is formed the centralized agreements unit should be placed there. If that group is not formed, then this group should be aligned in our current organization to work in the same unit or branch with the personnel they interact with the most.
- Consideration should also be given to using the same approach with other areas that involve the passing of funds to other parties to develop projects and construct them. This would include the municipal bridge program, Powell Bill program, certain rail, transit, and bike projects, etc.

2) *Need to research the use of a web-based application for the development and drafting of agreements.*

DOT shall:

- IT is currently updating data, designing a program, and moving forward with the implementation of the Agreement Application Process begun in 2005.
- Begin using a web-based application for the preparation of agreements to increase efficiency, uniformity, and accuracy of the agreements
- Provide training to designated field staff and centralized staff on the use of the web-based application
- Develop a training manual, checklist, and guidelines on the agreements process as a resource for both external and internal customers
- Develop link on the department website with procedures, contacts, FAQ's, etc. for a training and informational resource (similar to web link for enhancement program now).
- Training on agreement preparation and the responsibilities of each party, for both internal and external customers, is critical to the success of any new initiative; it is anticipated that the Agreements Unit would be responsible for this training and on-going assistance throughout the process to insure accurate and timely delivery

3) *Need to confirm that agreements are being executed by the appropriate departmental level of management.*

DOT shall:

- Based on research of the General Statutes and Administrative Code authority to execute agreements on behalf of the Department of Transportation by the SHA is by delegation from the Secretary of Transportation (G.S) and also identified as a duty of the administrator position (AC).
- After TMT recommendations have been implemented and are operational, conduct a review to determine if the execution authority is at the right level or needs to be amended or expanded. Execution authority could be determined for at a dollar threshold or for a particular type of agreement.
- Include the Attorney General's staff to insure legality of any actions needed.

4) *Need to determine adequate level of staffing to perform the administration of the agreements process for the department*

DOT shall:

- In June 2007, a proposal to establish an External Project Group for locally administered projects by restructuring the Agreements and Enhancement Units and adding certain positions and project management responsibilities was approved. The proposal was not implemented pending the McKinsey study and TMT recommendations. The organizational structure of this proposal should be considered to carry forward the recommendations of this report.
- Each division should have a designated employee that oversees agreements in that division. Determination would need to be made if the work can be added to an existing administrative position. The division position should work closely with the Division Project Manager and Contract Officer for oversight and compliance on all division agreements.

- 5) *Project oversight and monitoring of compliance by all parties to the terms of the agreement after execution and funding approval needs to be improved and a clearly identified responsibility for a departmental unit/branch or position.*

DOT shall:

- Project management after the agreement process is completed is critical to the success of a project. Currently, this responsibility is primarily handled at the division level for most projects but is not being done for many others. There is a need to train not only departmental staff but other parties such as local governments on each party's responsibilities for all phases of a project.
- It is critical, both for federally funded and state funded projects, that all parties comply with the specified policies and procedures set forth in the executed agreement to avoid any non-compliance auditing issues. The Department should identify which projects with executed agreements should be managed at the division level (ie. access, spot safety, contingency, state funded projects, etc) and which projects should be monitored by the central Agreements Unit (ie. CMAQ, SAFETEA-LU, TIP, federally funded projects, etc.). The executed agreement should identify who will be responsible for project management for that project.
- As part of the project management function, the Agreements Unit would work with the Fiscal staff at the various invoicing and project close out dates as set forth in the agreement.
- Project management would include identifying "milestones" to be tracked and monitored for a project for funding and project delivery purposes.
- As referenced in #4 above, appropriate staff levels would need to be determined to provide the necessary level of project management required for each agreement.